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JUN 13 1994

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June 13, 1994

Ms. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: MM Docket 94-34

Dear Mr. Caton:

Transmitted herewith on behalf of Texas Association of Broadcasters is an original and four (4) copies of its Comments in response to the Notice of Inquiry in MM Docket 94-34.

Should you or the staff have any questions, kindly contact the undersigned.

Sincerely,


Neal J. Friedman

cc: Ms. Anne Arnold
Henry L. Baumann, Esq.
Erwin Krasnow, Esq.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of)
Commission's Equal)
Employment Opportunity Rules)

MM Docket No. 94-34

TO: The Commission

COMMENTS OF THE TEXAS ASSOCIATION OF BROADCASTERS

Neal J. Friedman, Esq.
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June 13, 1994

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SUMMARY

The Texas Association of Broadcasters ("TAB") respectfully submits its comments in response to the *Notice of Inquiry* ("NOI") in MM Docket 94-34. TAB is, and always has been committed to minority employment. TAB operates a job bank, which is updated twice a month. TAB has under active consideration an expansion of this service taking advantage of the latest advances in computer technology.

TAB has already expressed its grave concern over the Commission's recent *Policy Statement* in a recent letter supporting the petition for reconsideration and clarification filed on behalf of the National Association of Broadcasters. TAB notes herein several anomalies as a result of the Commission's recent EEO enforcement actions in Texas in which licensees received sanctions even though they were above 50 percent of parity.

The paperwork costs associated with complying with the Commission's new policy are enormous. A TAB survey calculated the annual cost to broadcasters at an average of almost \$16,000 for radio stations and \$9500 for television stations (not including administrative support at the corporate level). Extrapolated nationwide, the TAB survey shows an annual cost to broadcasters of \$168 million. By the Commission's own estimate, 96 percent of all licensees are fully in compliance with its EEO policies. Thus, the Commission must ask itself whether the paperwork costs outweigh the benefits.

TAB submits an alternative proposal that would relieve licensees of this enormously costly paperwork burden while ensuring adherence to the Commission's

goal of equal employment opportunity for women and minorities. TAB proposes that any station reporting 50 percent or greater parity with the local workforce be deemed in compliance absent a *prima facie* showing of discrimination. A station meeting these criteria would not be required to maintain documentation of its recruitment efforts for the following year. A station that fell below 50 percent of parity would not be permitted to be excused from recruitment documentation until it reach 60 percent of parity.

TAB also urges the Commission to pay particular attention to the problems of small market broadcasters.

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MM Docket No. 94-34

TO: The Commission

COMMENTS OF THE TEXAS ASSOCIATION OF BROADCASTERS

The Texas Association of Broadcasters ("TAB"), by its attorney, hereby submits its comments in response to the *Notice of Inquiry* ("NOI"), FCC 94-103, released April 21, 1994, in the above captioned proceeding.¹

1. The NOI, in response to a mandate from Congress contained in Section 22(g) the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), seeks public comment on a broad range of issues related to its rules, procedures, policies, standards and guidelines in promoting equality of employment opportunity in the broadcast industry. TAB is a voluntary association, established in 1951 and incorporated the following year as a non-profit corporation, representing radio and television stations throughout the state of Texas.

I. Broadcasting in Texas

There are 701 licensed and operating commercial radio stations in the State of Texas and 126 television stations -- more than any other state in the Nation. Texas

¹ By Order, DA 94-495, released May 16, 1994, the Commission extended the deadline for comments to June 13, 1994 and the deadline for reply comments to June 28, 1994.

includes two of the top 10 markets, three of the top 50 markets and 15 of the top 150 markets.² The vast majority of Texas broadcasters, however, are in medium and small markets. There are 239 stations operating in markets with populations of 200,00 persons or less; 169 stations in markets of 20,001 to 100,000 persons; 250 stations in markets of 100,001 to 500,000 persons; and 169 stations in markets of more than 500,000 persons. Many of the stations in small to large markets are owner-operated, but some of America's most prominent media groups have invested in Texas stations as well. The ethnic diversity of Texas is as rich as any part of America. Blacks and Hispanics constitute significant portions of the workforce in many Texas markets. In fact in many South Texas markets Hispanics actually are statistically in the majority. Texas has been in the forefront of Spanish language broadcasting. KCOR, San Antonio in 1945 became the first full-time Spanish language radio station in the United States and in 1954 the nation's first full-time Spanish language television station went on the air in Texas. Today there are 110 Spanish language radio and 10 Spanish language television stations in Texas. Minorities are well represented in the ownership, management and staffs of Texas' broadcast stations. Thus, TAB's membership brings a broad range of perspectives to the discussion.

II. Texas Broadcasters' Commitment to EEO

TAB is, and always has been, committed to equality of employment. TAB operates a job bank that is free to its members. The listings are published twice a

² *Television and Cable Factbook*, 1994 Ed., p. A-1090.

month and sent to TAB members and available at a nominal cost (to cover postage, etc.) to non-members. The list is sent monthly to all member stations and six to eight times a year to every station in the state. Updates are prepared on at least a bi-weekly basis and distributed on request to job applicants and stations. Only equal opportunity employers are permitted to place listings of openings.

A special effort is made to reach out to educational institutions with large numbers of minorities to encourage them to alert students about the opportunity to put information concerning their availability and qualifications in front of the general manager of every radio and television station in Texas. The Job Ads also are sent regularly to several hundred associate members of TAB. Special expanded editions (with more job seekers and more detailed resume material on each individual) are prepared for graduating seniors. The job listings cover both radio and television, large and small markets and seek both experienced and entry level applicants. Although TAB does not have any means of quantifying the numbers of minority job seekers placed through the Job Ads, the reports that Texas stations file with the FCC regarding their recruitment efforts indicate the TAB is an important source of referrals.

In addition to the Job Ads, TAB has included seminars on EEO and programs and discussions on how to meet the spirit as well as the letter of the regulations at practically every convention held in recent years. The head of the Texas Employment Commission, leading labor law experts and lawyers specializing in FCC regulations in this area have appeared repeatedly to discuss EEO procedures and offer suggestions

aimed at providing the widest possible opportunity to minorities at Texas broadcast stations. TAB also has included numerous articles in the monthly newsletter sent to radio and television stations, faxed special messages to station personnel directors, and worked with general managers to provide maximum equal employment opportunities in Texas broadcast stations.

III. The Commission's Policy Statement Is a Cause for Grave Concern

The Commission's recent *Policy Statement* on standards for assessing forfeitures for EEO violations, 9 FCC Rcd 929 (1994) (*petitions for reconsideration and clarifications pending*) ("*Policy Statement*"), has caused grave concern among TAB members. On May 16, 1994, the TAB Board urged the Commission to reconsider the retroactive fines issued against 14 Texas radio stations. TAB urged the Commission to grant the Petition for Reconsideration filed by the National Association of Broadcasters ("NAB"). TAB questioned the fairness and equity of imposing forfeiture guidelines first announced in the February 1, 1994 *Public Notice* on renewal applications that had been pending since 1990 as well as the newly-announced policy of placing greater emphasis on recruiting efforts than actual results. The TAB Board wrote:

Licensees meeting the 50 percent of parity standard in both hiring and employment still can be subject to a short-term renewal and/or reporting conditions, simply because they failed to attract an arbitrary number of minority applicants that the Commission now deems-- several years after the fact and with no advance notice-- to constitute an "adequate" pool³.

³ The *Policy Statement* did not define what the Commission meant by an "adequate" pool and, in public appearances since then, Commission staff members have consistently refused to provide further guidance.

The text of the TAB letter is attached as Exhibit 1.

This has produced some peculiar anomalies. KEGL-FM, Fort Worth, Texas, exceeded 50 percent of parity in six of the seven years of its license term. Yet the Commission imposed a forfeiture of \$18,750, a short-term renewal and reporting conditions on the licensee because it could not document that it had an "adequate" number of minorities and females in its applicant pools. The licensee's employment profile only served to produce a downward adjustment of the \$25,000 forfeiture. *Eagle Radio, Inc., et al.*, FCC 94-17, released February 1, 1994.

KTEM-FM, Temple, Texas, was at 50 percent of parity for all seven years of its license term and, in fact, employs one of the few female Hispanic news directors in the Southwest and possibly the only one in Texas. The Commission found "no evidence of employment discrimination." Yet it imposed a \$25,000 forfeiture, a short-term renewal and reporting conditions on grounds "the licensee's recruitment efforts were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (23) of its 35 full-time positions." *KTEM Radio, Inc., et al.*, FCC 94-17, released February 1, 1994.

IV. Commission Policies Vague, Arbitrary, Unfair and Counterproductive

TAB respectfully submits that the vague, arbitrary and unfair policies imposed in the *Policy Statement* will do nothing but hinder the Commission's goals of promoting equality of employment and promotion in the broadcast industry, goals to which TAB and its members subscribe. As will be demonstrated below, the emphasis on efforts rather than results will not lead to increased minority employment and may, in fact,

foster cynical hiring practices on the part of a small number of licensees more interested in constructing a proper paper record of having an "adequate" number of minority applicants than in creating genuine opportunities for employment and promotion. Moreover, the paperwork burden of the Commission's new record-keeping requirements is enormously burdensome, especially on small-market stations.

One veteran East Texas broadcaster with an unassailable record of hiring and promoting minorities reported to TAB on his minority employment:

On our staff of nine now we have one black and four women and a Yankee. They occupy every level job here so I guess white males from Texas are my minority ... I have a lifetime of despising racism and bigotry so I am not much help when it comes to complying with some bureaucrats standard contrived a thousand miles from my market and job pool. I will tell you this, I worry more about how to document all this stuff to satisfy them than about finding minority applicants.

Another respected, responsible West Texas broadcaster told of his "fear that despite our best faith efforts to promote equality of employment and promotion opportunity at our station, that we may at some time be fined a minimum of \$12,500 which we will not be able to pay, since the station is barely breaking even as it is. He added:

This potential fine will not be due to actions on our part, but due to a lack of action on the part of minority applicants in responding to our employment opportunities ... In order to avoid a fine for a "less than adequate pool of minority applicants," an unscrupulous operator might be tempted to go down to the local office of the state employment commission, round up every person of color, and get them to fill out an application. This is not my intent, and I am sure that this is not the desire of the Commission. But if you are going to judge the EEO efforts of broadcast stations solely on the basis of how many people of which color apply, you will be opening the door to that very sort of employment application stacking,

and it will do nothing to further your goals or promoting equality of employment and promotion opportunities.

Yet another longtime broadcaster from the Texas Panhandle reported with great frustration about the lack of response to his repeated efforts to obtain minority referrals from local civic and community organizations and from Texas colleges and universities with sizable numbers of minorities. He had sent as many as 50 letters to organizations that are supposed to be interested in referring minority applicants for jobs and received only two referrals. The new requirements, interpreted by his Washington counsel as meaning he must have at least one minority applicant in two-thirds of his hiring opportunities, left him, he said ruefully, with no choice but to order his staff to take applications from winos who came in off the street to be sure of meeting the requirements for documenting an "adequate pool" of minority applicants for one opening.

V. The Commission Must Assist Small Market Broadcasters

The *NOI* at ¶21 seeks comment on ways the Commission can better enable small market broadcasters to meet their EEO obligations. The *NOI* notes that broadcasters in small markets frequently state they have unique difficulties in attracting and retaining minority employees.

TAB agrees. Licensees in small markets, especially where the minority population is not as great as in large cities, have difficulty first in attracting minority applicants. Even if the licensee is successful in attracting a minority, the talented minority will soon be stolen away by a station in a larger market able to pay a bigger

salary. What some have characterized as a "revolving door" policy for minorities is, in fact, a reflection of the realities of the talent-based broadcasting business. Talented employees, minority or not, do not stay long in small markets.

VI. Paperwork Burden Costs Texas Broadcasters \$12 Million a Year

The paperwork burden of the Commission's newly-announced policy is enormous. TAB conducted a survey among its members of the costs of complying with the new record-keeping requirements. TAB asked managers to estimate the time spent on EEO compliance including paperwork and administration and to calculate the dollar value of these efforts.⁴ The results are summarized below

ESTIMATED COSTS OF EEO PAPERWORK FOR TEXAS BROADCAST STATIONS

MARKET SIZE	AVERAGE COST	NUMBER OF STATIONS	TOTAL COST
Metro Market	\$37,400	124	\$4,637,600
Large Market	\$31,200	169	\$5,272,800
Medium Market	\$6,300	169	\$1,064,700
Small Market	\$350	239	\$53,650
All Markets	\$9,500	126	\$1,197,000
		570	\$12,255,750

⁴ The cost estimates excluded legal fees, out-of-pocket expenses associated with bringing in applicants from out of town for interviews or FCC forfeitures.

Most television stations and a large number of metropolitan market radio stations indicate their costs would be much higher were it not for the additional resources available to them at the corporate or group level and the fact that a far larger number of minorities are available to stations in larger markets. A complete analysis of the TAB survey is attached as Exhibit 2.

The Commission cannot ignore the enormous cost of record-keeping. The TAB survey indicated the average annual cost per station of EEO compliance in Texas is \$15,775 for radio stations and \$9,500 for television stations. Multiplying this by the 9,958 commercial radio and the 1,158 full-power commercial television stations licensed as of May 31, 1994⁵, equals an annual cost of more than \$157 million for radio and \$11 million for television. The Texas survey calculated costs for a 12-month period that for the most part preceded the *Policy Statement*. Those costs clearly will increase even more as a result of the increased paperwork requirements and vastly expanded pressure on broadcasters to go beyond what could be reasonably expected in the way of documentation. Broadcasters will now have to guess in advance what reams of files the Commission may ultimately expect years from now when each station's license is up for renewal. Many Texas broadcasters have told TAB that their FCC counsel are urging them to prepare paperwork and go through mock compliance reviews several times a year to be able to prepare adequately for the ultimate FCC review.

⁵ See FCC News Release June 7, 1994.

Relieved of even some of this \$168 million paperwork burden, broadcasters could allocate resources to efforts that would have more meaningful results for the communities they are licensed to serve and engage in activities that would result in genuine opportunities for the employment and promotion of minorities and females in the broadcast industry. From the unenthusiastic - if not nonexistent - response many Texas broadcasters report to their repeated efforts to reach out to minority sources for job prospects, it would appear that at the local level many of the organizations recommended as sources of minority referrals are far less interested in recommending someone for a job than in more community oriented concerns such as improved schools, basic sanitation services, better roads, pollution control and the variety of concerns broadcasters discover in their annual ascertainment efforts. Much more success might be achieved in promoting minority employment in the broadcasting industry if the Commission encouraged or even credited licensees for projects such as providing internships to high school and college students or offering or underwriting special classes for individuals interested in advertising, sales or other topics that might qualify them for entry or advancement in the business.

Clearly most of the paperwork is unnecessary. The *NOI* states at ¶14 that approximately 80 percent of broadcast renewals are granted after only routine EEO review. Of the remaining 20 percent, only one-fifth receive any EEO sanctions. Thus, only four percent of the licensed broadcast stations are found deficient. Rarely does the Commission find evidence of outright discrimination. The question the Commission

must ask itself is whether the costs of its present system of EEO enforcement outweigh the benefits.

There is an additional serious problem associated with the Commission's current operating procedure with regard to EEO enforcement. A number of stations in the past have had petitions to deny their license renewal filed against them by individuals and organizations purporting to act as private attorneys general. The "petitioners" allege EEO violations and then approach the licensee offering to withdraw the petition if the station will adopt an EEO program drawn up by the petitioners for a fee. To prevent this practice from becoming an attempt to extort money from the stations, the FCC should issue a regulation prohibiting stations from preventing the petitioners from accepting money from stations they challenge. All that need be done is to extend Section 73.3523 of the Commission's existing rules to make the prohibition against "green mail" apply to persons and groups challenging stations' EEO practices. The Commission action in 1989 against "green mail" has been most effective in making it extremely difficult for any license renewal challenger to extract money from stations.

The mere filing of a petition challenging a station's EEO policies can cost a station hundreds or thousands of dollars in legal fees to defend itself. Thus, even the threat of such a filing, whether warranted or not, is of great concern to stations, especially small market stations who do not have the resources to have a regular Washington attorney and cannot afford high legal fees.

VII. Alternative Proposal to Simplify Compliance

TAB respectfully submits an alternative proposal for determining whether stations are in compliance with equal employment opportunity mandates and for more effectively promoting new and innovative efforts to achieve diversity in broadcasting. Rather than focus on how many minorities may have opted to respond to a station's outreach efforts, TAB suggests the Commission reconsider its January 31 guidelines, set a new policy far easier to judge and adopt additional provisions aimed at encouraging expanded minority recruitment. TAB proposes that any station reporting 50 percent or more of parity in its annual employment report (FCC Form 395-B) be deemed to have been in compliance for the previous year absent a *prima facie* showing of discrimination or a challenge to the accuracy of the numbers. Any station so held to be in compliance with EEO guidelines would be exempted from specific formal recruitment and documentation requirements for the following year.

If the annual employment report for any year showed the licensee was at less than 50 percent of parity for females, the dominant minority, any significant minority group (greater than five percent) or overall minorities the station then would be required to comply with the recruitment ratios and record-keeping requirements imposed in the *Policy Statement* until it reached not 50 percent of parity, but 60 percent or more of parity. There would, thus, be a powerful incentive for stations to maintain parity.

To guarantee stations do not view achieving 50 percent of parity as an end goal, the Commission could require all stations to file as part of their annual employment report

a narrative statement about their efforts and success in recruiting, hiring and promoting minorities and achieving equal employment opportunities. Such a narrative might include information concerning participating in cooperative efforts with other broadcasters, internship programs, participation by station personnel in educational programs and the like. The Commission and the public would be able to monitor and assess a licensee's EEO recruitment efforts without imposing an enormously costly paperwork burden.

TAB's proposal would offer the advantage of giving every broadcaster a clear indication in advance of what will be required and an opportunity to comply before facing fines and/or other penalties. The retroactive application of the January 31 policy guidelines is viewed as fundamentally unfair by most broadcasters. The Commission's 1987 pronouncement of its intent to place greater emphasis on recruitment efforts than actual employment ratios certainly never gave any licensee an inkling that it would subsequently be held not to be in compliance if it failed to recruit so as to attract minority applicants in two thirds of their hiring opportunities as the *Policy Statement* now requires. A clear enunciation in advance about what will be required clearly will make it easier for broadcasters to do what is expected of them. The TAB proposal also should make it far easier for the Commission staff to zero in on any problem stations failing to achieve 50 percent of parity and to concentrate resources on correcting problems instead of focusing attention as the current procedure does on those stations that may or may not have come under scrutiny of private attorneys who make a

practice of petitioning against stations they then offer to prepare for a fee plans to set up minority recruitment programs.

VIII. Problems of Small Market Broadcasters

The *NOI* ¶21 notes that broadcasters in small markets frequently state they have unique difficulties in attracting and retaining minority employees. The *NOI* seeks comment on how "small market broadcasters" should be defined and suggestions to what extent the Commission's EEO policies can reflect the unique difficulties facing these broadcasters.

TAB agrees that the problems of small market operators are so difficult special considerations should apply. Licensees in small markets, especially where the minority population is not as great as in large cities, have difficulty first in attracting minority applicants. Even if the licensee is successful in attracting a minority, the talented minority will soon be stolen away by a station in a larger market able to pay a bigger salary. What some have characterized as a "revolving door" policy for minorities is, in fact, a reflecting of the realities of the talent-based broadcasting business. Talented employees, minority or not, do not stay long in small markets.

The experience of one respected TAB member, Greg Thomas, president and co-owner of KELI FM in San Angelo, is illustrative of the situation facing many broadcasters keenly supportive of EEO goals and diligent in attempting to recruit minorities:

The problem that we have seen occur over and over again is the same one that we feel will adversely affect our ability to carry out the Commission's mandate of promoting equality of employment and promotion opportu-

nity, as defined under the February rules. The problem is a lack of response among minority applicants to our employment opportunities. We have notified minority service clubs (Lion's Clubs, etc.) minority churches, and minority social organizations of our openings. We advertised on our own air, since Arbitron tells us that 21% of our listeners are Hispanic. We also used the classified section of the local newspaper. We have even spent over \$600 this year to advertise in publications directed specifically at minority job seekers. I would say that the results in our good faith efforts to attract minorities have been less than successful. Minority applicants simply do not apply at KELI in the numbers needed to assure us that we will not incur a fine under the February rules. Our station is located in an area of town where over half of the residents are either Black or Hispanic, and they don't even come to the building. Qualified minority prospects are in demand and in many industries. In this market, we compete with Levi Strauss, GTE and Johnson & Johnson for minority applicants. A "mom and pop" operation like ours just can't hold a candle to the wages and benefits that companies like those pay. Furthermore, many minorities who are ambitious and want to improve their lives often leave this town and go to larger cities where the pay scale and the opportunities are better. This leaves radio station owners like us in the unenviable position of having done everything that both their Washington attorneys and other reputable broadcasters have suggested to insure a pool of minority applicants, and still we come up short.

TAB suggests that the Commission designate stations licensed to communities located in counties where the total population, according to 1990 census figures, is less than 100,000 persons as "small market stations." The current policy of giving special consideration only to stations of five or fewer employees favors licensees who may or may not be in a small market. In competitive markets those small staff stations are being given an advantage over broadcasters who hire larger staffs in order to provide better service to their communities through news coverage, sports, weather, public affairs programming and the operation of a full service broadcast facility.

As one veteran small town broadcaster, Tom S. Whitehead, Jr., observed:

Where you once had one or two finally healthy stations serving a town, you now often find two or three fighting to stay alive. This necessity to cut costs accounts in large part for the rush to satellite-fed operations and the demise of local news and real public service which small market stations traditionally provided in the past ... As a small market broadcaster who has several decades of experience in the business, I can testify to the fact that running a successful station is more difficult today than in years past. The number of dollars available to support a full-service radio station in a small market has not kept up with the costs of operation. One major factor in this trend is one I call the "Wal-Mart Syndrome." When a giant Wal-Mart Store comes to town, it tolls the death knell for many small retailers who cannot compete. Since Wal-Mart does practically no radio advertising, this means a net loss of revenue which the stations previously received from the small merchants."

Defining "small market" stations in terms of population of the county to which they are licensed would recognize the increasing difficulties under which these stations operate. The expansion of FM frequencies over the past 10 years added a second and third station in many of these markets even though the advertising dollars available did not grow to support that many broadcast operations. The realities of the difficulties of operating and providing public service and news coverage in communities of this size re what warrants the special consideration rather than the actual staff size. Therefore, TAB suggests stations in counties of 100,000 or less should be exempt from EEO reporting requirements in the same way the Commission now treats stations with five or fewer employees. Setting the limit based on the population of the county rather than the city of license will avoid inappropriate designations of some stations as "small market" that may be located in towns or cities of 100,000 or less but actually are part of much large metropolitan markets.

IX. Credit for Part-Time Employees

The *NOI* at ¶22 seeks comment on whether the efforts documentation for part-time hires should be eliminated for all broadcasters and what level of consideration should be given for part-time hires. The *NOI* notes that the Commission's "primary EEO policy focus" is on full-time employees. On this basis, the Commission should eliminate all record-keeping requirements for part-time hires. TAB points out, however, that part-time employees, particularly in smaller stations, are often the first place a manager will look when there is an opening for a full-time employee. The part-timer is a known quantity to the employer. As often as not, an individual has accepted part-time employment as a way of getting a foot in the door with the expectation that it may lead to a full-time job. TAB, therefore, respectfully suggests that the Commission permit licensees to cite their record of part-time employment in mitigation of an minor deficiencies in its full-time employment profile. An employee should be required to work at least 12 hours in order to qualify for consideration. This would be the equivalent of one and a half days and would encompass employees who work weekend shifts where many part-timers are utilized.

X. Cooperative Efforts With Other Broadcasters

The *NOI* at ¶25 seeks comment on what the Commission can do to encourage joint recruitment efforts by broadcasters. TAB endorses the Commission's initiation of even a discussion about whatever it can do to encourage such activities. As a start, TAB would suggest that the Commission should consider cooperative efforts on a par with individual efforts when evaluating a licensee's performance. If meaningful progress is to be made in recruiting, hiring and promoting minorities and females, it

is best accomplished through joint efforts by broadcasters. There is much the Commission could offer by way of guidance and assistance in surmounting the real problems broadcast associations face in trying to target minority recruits and to refer job applicants who can help stations achieve more diverse staffs. It would be helpful, for one thing, if the Commission could help identify on an on-going basis the national organizations actually able to refer minority applications. TAB members have found some organizations traditionally recommended as sources of minority referrals, frequently are focused more on broad political and social action issues rather than serving as job placement services. The Commission might also be able to play a role in encouraging referrals of minorities by stations in states and cities with large minority populations to similar markets in other states where there are fewer minorities in the general populace.

As indicated above, TAB operates an active job bank that has been an important resource for recruiting minorities and females. TAB now has under active consideration plans to create a computerized online service that would provide broadcasters and applicants with instant access to the latest information. Many Texas broadcasters already cooperate in metropolitan or regional job fairs in conjunction with colleges and universities. Participation in job banks offered by minority organizations should be credited.

XI. Other Issues

The Commission seeks comment on several other issues. TAB comments on these in summary fashion:

- ***Whether the Commission should encourage licensees to do business with minority and female entrepreneurs in all parts of the station operation (§23)*** -- This would impose another layer of burdensome record-keeping on licensees. Existing state and federal laws are sufficient to encourage licensees to do business with minority and female vendors.
- ***Whether the Commission should request information for a period other than the last three years of the license term (§27)*** -- TAB opposes this proposal. A licensee's performance over the latter part of its license term is more probative of its future performance. *Monroe Communications v. FCC*, 900 F.2d 351 (D.C. Cir. 1990).
- ***Whether the Commission should conduct on-site audits (§27)*** -- TAB opposes this proposal. This would be a waste of the Commission's resources. There is no information that could be obtained through an on-site audit that could not be obtained from records already on file with the Commission or via an inquiry.
- ***Whether the Commission should require that the Annual Employment Report include the same 15 job categories as now required for cable and MVPD operators (§29)*** -- TAB opposes this proposal. The vast majority of broadcast station jobs fit into the existing upper four job categories and the

"office and clerical" category. Some stations may also employ one or two persons who would fit into the "service workers" category. Further expansion of the job categories would serve no useful purpose and would only increase the record-keeping burden.

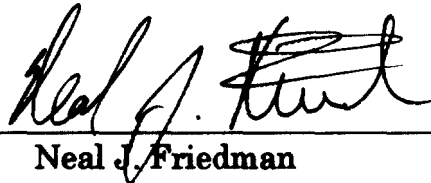
CONCLUSION

TAB appreciates this opportunity to participate in the *Notice of Inquiry* and to assist the Commission in making its report to Congress in October. We look forward to reviewing the comments of others in this proceeding and the Commission's report when it is presented to Congress.

Respectfully Submitted,

TEXAS ASSOCIATION OF BROADCASTERS

By

A handwritten signature in dark ink, appearing to read "Neal J. Friedman", is written over a horizontal line.

Neal J. Friedman

Its Attorney

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June 13, 1994